

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 276

September 5, 1996, 10:21 pm
Page S-9955 Temp. Record

VA-HUD APPROPRIATIONS/VA Spina Bifida Benefits

SUBJECT: Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Bill for fiscal year 1997 . . . H.R. 3666. Germaneness of Daschle amendment No. 5197.

ACTION: AMENDMENT GERMANE, 62-35

SYNOPSIS: As reported, H.R. 3666, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Bill for fiscal year 1997, will provide a net of \$84.7 billion in new budget authority, which is \$2.8 billion under the Administration's request, \$714 million more than provided in the House-passed bill, and \$2.3 billion more than provided in FY 1996.

The Daschle amendment would create an entitlement to total VA medical coverage and a monthly stipend for Vietnam veterans' children who have spina bifida (except spina bifida occulta), provided those children were conceived after the veterans were on active duty in Vietnam during the Vietnam conflict. The VA would provide such health care as it determined was needed to treat any such children for spina bifida and any associated disabilities. The VA would establish three levels of disability, and would pay \$200, \$700, or \$1,200 per month to each child based upon that child's level of disability. Those payments would be disregarded when determining eligibility for a child for any other veterans benefit or any other Federal or federally assisted program. Additionally, the VA would be permitted to pay for temporary vocational training and rehabilitation for such children. The effective date for eligibility for benefits for an individual under this amendment would not be before the date on which an application of benefits for such individual was made.

Debate was limited by unanimous consent. Following debate, Senator Bond made the point of order that the amendment was not germane, because it created a new entitlement program on an appropriations bill on a subject that had not been considered or acted upon by the authorizing committee. The question before the Senate then became, Is the amendment germane?

Those favoring finding the amendment germane contended:

(See other side)

YEAS (62)			NAYS (35)		NOT VOTING (3)	
Republicans (16 or 31%)	Democrats (46 or 100%)		Republicans (35 or 69%)	Democrats (0 or 0%)	Republicans (2)	Democrats (1)
Abraham	Akaka	Johnston	Ashcroft	Hatch	Hatfield- ^{2AN}	Inouye- ²
Cochran	Baucus	Kennedy	Bennett	Hutchison	Murkowski- ²	
D'Amato	Biden	Kerrey	Bond	Inhofe		
DeWine	Bingaman	Kerry	Brown	Kassebaum		
Domenici	Boxer	Kohl	Burns	Kempthorne		
Faircloth	Bradley	Lautenberg	Campbell	Kyl		
Grassley	Breaux	Leahy	Chafee	Lott		
Helms	Bryan	Levin	Coats	Lugar		
Jeffords	Bumpers	Lieberman	Cohen	Mack		
McConnell	Byrd	Mikulski	Coverdell	McCain		
Pressler	Conrad	Moseley-Braun	Craig	Nickles		
Shelby	Daschle	Moynihan	Frahm	Roth		
Snowe	Dodd	Murray	Frist	Santorum		
Specter	Dorgan	Nunn	Gorton	Simpson		
Stevens	Exon	Pell	Gramm	Smith		
Warner	Feingold	Pryor	Grams	Thomas		
	Feinstein	Reid	Gregg	Thompson		
	Ford	Robb		Thurmond		
	Glenn	Rockefeller				
	Graham	Sarbanes				
	Harkin	Simon				
	Heflin	Wellstone				
	Hollings	Wyden				

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

The Daschle amendment would give veteran health benefits to non-veterans with spina bifida who were born to Vietnam veterans. Vietnam veterans were exposed to the herbicide agent orange. A direct causal link between exposure to this herbicide and this debilitating health problem has not been established, but enough evidence exists, as determined by the prestigious National Academy of Sciences (NAS), to warrant passage of this amendment. As a procedural matter, we would have preferred not to have brought this issue up on this particular bill, but we had few other options in the time remaining this Congress. The minimal costs of the amendment would be fully offset by passage of a veterans' benefit reform that has wide, bipartisan support.

A few years ago Congress passed the Agent Orange Bill (see 102d Congress, 1st session, vote No. 9). That bill required benefits to be given to Vietnam veterans for illnesses for which no causal link to Vietnam veteran's exposure to agent orange had been shown, but for which Congress believed enough evidence existed to justify the giving of benefits. That bill also required the NAS to study other illnesses to determine if benefits should be given based on a standard of evidence for giving benefits that was lower than a causal link standard. The NAS has developed a 4-category ranking system for implementing the Agent Orange Bill. Category 1 is for problems for which a direct causal link is established; category 2 is for problems for which there is limited/suggestive evidence of an association; category 3 is for health problems for which there is inadequate or insufficient evidence to determine if an association exists; and category 4 is for problems for which there is limited/suggestive evidence of no association whatsoever. Veterans are given compensation for health problems that fall into categories 1 and 2.

In March of this year the NAS reported that it had enough evidence that agent orange caused spina bifida to give it a category 2 classification. Spina bifida is a serious birth defect that varies in severity but typically requires lifetime care. It occurs when the spinal cord does not close fully early in pregnancy. It is a complicated, and fairly rare, disability that requires coordinated care from many medical specialists, including neurosurgeons, neurologists, orthopedists, pediatricians, internists, psychologists, physical therapists, dietitians, and social workers. Its causes are unknown, and may be varied. Recent research, as our colleagues have noted, has focused on folic acid deficiencies. The NAS, though, has now found that for Vietnam veterans the evidence suggests that their exposure to agent orange has caused a greatly increased incidence of spina bifida in their children. The evidence is not conclusive, but it is suggestive, which our colleagues in the past have voted is good enough to give veterans an entitlement to treatment for an agent orange illness.

These children of veterans are obviously not veterans. As the law is currently written, they are not entitled to VA medical benefits for service-connected disabilities. However, if their congenital deformities have resulted from their fathers' service in Vietnam, and the NAS says that the evidence suggests that they have, then we believe they should receive veteran disability benefits. If they are casualties of the war they should be treated as such.

During the course of this debate, we have gone into great deal on the tremendous lifetime suffering that people with spina bifida must endure, and we have talked about the extensive and costly medical treatment that must be provided. Those of us who are Democrats are shocked that some Republicans have dared to question the advisability of giving these benefits. They should see these children, and should understand the suffering they endure. If they did, they might not be so worried about facts and charts and statistics and parliamentary procedures. We concede that these children with spina bifida do not go without care, whether through private insurance, Federal assistance, or private assistance such as through the Shriners, but those are not the appropriate sources of funding. These children's disabilities are service-connected disabilities that should be paid for by the VA.

Some parliamentary complaints have been made with regard to this amendment. Senators have correctly pointed out that it will create a new entitlement on a matter that has not been considered by the authorizing committee. They are correct. It will create a new entitlement, but it is hardly the budget-buster that it has been portrayed as, because these children are already entitled to full medical care under Medicare/Medicaid, and because the Congressional Budget Office has estimated that we are only talking about 2,785 people who will get coverage. As for it not having been considered by the authorizing committee, that fact is beyond our control. The NAS issued its report in March yet the Chairman of the Committee has yet to hold hearings. He has protested that no bill was offered on the subject until right before the last recess, but no rule says that a bill must be offered before hearings may be held. We only have a few days left to act before this Congress ends. Though we would have preferred not to have followed this route, we had little other choice.

We urge our colleagues not to let their obeisance to Senate rules and procedures blind them to the need for providing these VA benefits. Care should not be denied on a technicality for little innocent children who have been crippled because of their fathers' brave and patriotic service to their country in combat. The Daschle amendment should be found germane.

Those opposing finding the amendment germane contended:

We are disgusted by this entire exercise. Most of the cardinal sins of American politics, past and present, are epitomized by this one vote. The monetary consequences are slight, and, all apologies to anyone with prejudices over Senators' fealty to historical practices, the precedential value of a majority-vote ruling can be overturned by the next transient majority. No, this vote is a symbolic vote. It is about politicians kissing babies, it is about waving the flag, it is about doing what is wrong based on emotion and fear instead of doing what is right based on facts, it is about cynical politics, it is about special interest groups demanding special favors from a bankrupt country, and it is about entitlements destroying our country.

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Based on the facts, this amendment should be rejected. Agent orange has been studied extensively for decades. Some of those studies have shown an association between exposure to agent orange and to specific illnesses, but no study except for the Ranch Hand study has indicated an association between this herbicide and spina bifida, and that study is too small to be statistically significant, plus it has other methodological problems such as recall bias, as testified to by Dr. Joel Michalek, the author of the study. That study found 3 cases of spina bifida among 792 children of Ranch Handers (there are approximately 2,300 Ranch Handers in total), who were the Air Force enlisted men who actually handled and spread this herbicide. Studies of those enlisted men found that they had elevated levels of dioxin in their bloodstream, the ingredient from agent orange that has been alleged to cause spina bifida. Ranch Hander officers and all other Vietnam veterans examined in numerous other studies have had no higher level of dioxin than other veterans or American civilians. Other people have been exposed to dioxin, such as agricultural workers, and have had elevated levels of it in their bloodstreams that are higher than the levels found among the Ranch Handers. Studies of those people, often of much larger populations, have not found any increase in spina bifida. In one case in Seveso, Italy, an explosion at a chemical plant caused tremendous exposure (some residents ended up with dioxin levels several thousands of times higher than in Ranch Handers), and numerous health problems resulted, but no increase in spina bifida occurred.

The Ranch Hand study examined all cases of birth defects. When all of those cases were tallied, no statistical difference was found between those births and births among the general population. For instance, that study found no cases of cleft palate. It would be just as much a mistake to conclude that exposure to agent orange prevents cleft palate as that it causes spina bifida. In a small sample size, statistical anomalies will always occur.

Nevertheless, based on this one small study with a statistical anomaly among the only group of Vietnam veterans with elevated levels of dioxin, our colleagues want to give an entitlement to the children of all Vietnam veterans, most of whom never had significant exposure to dioxin. Further, they want to give that entitlement even though several statistically significant studies of people who have had greater exposure to dioxin than any Vietnam veterans have had have found no correlation between it and spina bifida. Further, they want to give that entitlement out of the VA budget even though other Federal programs already exist to pay for every possible need for children with spina bifida. As some supporters of the Daschle amendment have conceded, no child with this birth defect in America goes without any needed medical care. Their sole goal is to make the VA pay for treatment.

Senators have said that the CBO estimates approximately 2,785 children of Vietnam veterans have this birth defect. The cost of providing care for these children of veterans, some of whom are now adults, would not be very high at all by Federal standards. Further, because the Federal Government already is providing care for many of these people through other Federal programs, spending money through the VA will be offset by cuts in spending on those programs. Further, the CBO made its estimate by extrapolating from the Ranch Hand study, even though those are the only Vietnam veterans who had any significant exposure to agent orange. Thus, even if it were true that an association existed, the CBO's estimate would be too high.

Considering that this amendment would not have a very large effect, some Senators may be wondering why we just do not simply vote for it. After all, right or wrong, it is to give veteran benefits to people who have been misled into believing that they have been injured due to their fathers' service in Vietnam, and giving them benefits will make them and others feel that justice has been served. The answer is that we were not elected to do what is expedient, we were elected to lead. If all Senators had the courage to do what was right, amendments like this one would not even be offered because they would be so overwhelmingly rejected that Americans would understand that they were not justified.

Our first objection is that this amendment would harm the Veterans' Administration. Though many veterans groups have supported the Daschle amendment, a few large groups such as the Disabled American Veterans have been conspicuously silent. They understand that providing benefits out of a set, and already inadequate, pool of funding for veterans' medical needs will result in less needed medical treatment for veterans. People with spina bifida get treatment already--they do not need to get it at the expense of veterans. The Daschle amendment provides an offset, but enactment of that offset has already been assumed in planning for the VA budget. Technically, that offset has not been enacted, but as a practical matter it is going to force cuts in the veterans budget to pay for coverage.

The next objection we have to the Daschle amendment is that it is based on emotion rather than reason, as we have already explained. One of the most enduring, and negative, images of American politics is of eager candidates kissing the cherubic cheeks of babies. In recent years, this image has been twisted with money. Politicians curry favor by spending. Americans do not like to be taxed and they do like to have money spent on them, so the most successful politicians have been the ones in Congress who have insisted on borrowing lots of money each year to spend on constituents. Now, instead of kissing babies, politicians are expected to borrow money to add to social programs to have the Federal Government take care of babies. If anyone points out the folly of ruining with debt the futures of those babies, or of the danger of trapping children in Federal dependency, they are accused of not really liking babies.

If veterans are not as popular as babies they run a close second. Perhaps taking to heart the maxim that patriotism is the last refuge of a scoundrel, Members fall all over themselves to pledge their devotion with borrowed money. Over the past couple of decades, the number of veterans has declined by 3 million, but spending on them has doubled. Unfortunately, all that spending has not gone to make sure that the neediest veterans get medical care. So much money is spent based on the State it is spent in rather than the number of veterans, and the eligibility for benefits has been so expanded, that many needy, war-wounded veterans do not receive

the care that they deserve.

The emotion of a vote that supposedly will help innocent children who have been crippled due to the patriotic service of their war-hero fathers is nearly irresistible, and it is being played to cynical partisan advantage. We have heard numerous partisan comments from Democrats about how unspeakably mean some Republicans are for opposing this amendment. We are not surprised; such comments are standard fare for certain Democrats. Democrats are well aware that this amendment is not necessary to provide treatment for children with spina bifida; they are well aware of the flimsiness of the evidence; they are well aware that their "offset" has already been budgeted for so that other veterans services are going to have to be cut to pay for these benefits. They are also well aware that they will be able to use this vote for political attack ads and for fund raising, and they will not hesitate to do both. Our third reason, then, for opposing this amendment is that as a matter of principle we will not cave in to unprincipled tactics.

Our fourth reason for rejecting this amendment is that it would bypass Senate procedures. The report on which the Daschle amendment is based was issued this spring, and our colleagues did not prepare a bill on it until right before the Senate went out for the August recess. As soon as the Senate returned, hearings were set for September 18, but bill proponents objected, and have now brought the amendment up on an appropriations bill. Passing a brand new entitlement with only a short amount of debate and without holding any hearings is rather reckless treatment of public funds.

Our fifth reason for opposing this amendment is that on a small scale it is a perfect model for why our Nation is nearly bankrupt. Within a few years, just five entitlement programs will consume every penny of revenue collected. Until the historic passage of the welfare reform bill this year, efforts to control the unsustainable growth of entitlement spending have been killed with demagogic rhetoric. The battle to control entitlement spending was first seriously joined in 1992 (see 102d Congress, second session, vote No. 75). A bipartisan attempt was made to slow the rate of growth of all entitlement spending except for Social Security. That effort was killed by the Democratic Majority Leader offering an amendment to exempt the next most popular entitlement spending after Social Security, which is veteran entitlement spending. That spending was (and is) small relative to the size of the budget, but it was used successfully as the wedge issue to kill entitlement reform that year. With this amendment, our colleagues will begin to turn the tide in favor of expanding entitlements yet again. Our country cannot afford to change course.

Members who dare vote against this amendment will be made to pay politically. Veterans groups, welfare groups, and other special interest groups will call this a key vote and will attack them, and the liberal media will add their echoes. Senators have everything to gain politically and nothing to lose from doing the wrong thing by voting for the Daschle amendment. We urge them to instead do what is right by voting against it.